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December 30, 2003

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BY HAND DELIVERY

Kathleen Dutt
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5158

Dear Ms. Dutt:

On behalf of Bill Nelson for U.S. Senate and Peggy Gagnon, as treasurer (collectively, "Respondents"), I submit the following response to the Commission's finding of reason to believe that Respondents violated provisions of the Federal Election Campaign Act ("the Act"), 2 U.S.C. § 431 *et seq.* (2003). Because the allegations in the Factual and Legal Analysis are without merit, the Commission should decline to take further action and close the file on this matter.

I. INTRODUCTION

This action was initiated by a complaint filed by the American Conservative Union alleging that Handgun Control, Inc., now the Brady Campaign to Prevent Gun Violence ("the Brady Campaign"), and the Handgun Control Voter Education Fund, now the Brady Voter Education Fund ("the Brady Committee"), committed a number of violations of the Act through making a series of expenditures, including certain expenditures allegedly benefiting Bill Nelson for U.S. Senate ("the Nelson Committee"). After evaluating the facts and legal provisions governing the alleged activity, the Commission has declined to take further action as to all but one of the claims that implicated Respondents.

The sole remaining allegation with respect to the Respondents is that the Brady Campaign made, and the Nelson Committee accepted, a prohibited in-kind contribution resulting from an October 16, 2000 press conference at which Jim and Sarah Brady ("the Bradys") endorsed Senator Nelson's candidacy for Senate. However, as the Bradys made their endorsements in their personal capacities, and not

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on behalf of either the Brady Campaign or the Brady Committee, this allegation is without merit. The Commission should therefore decline to take further action and dismiss this matter entirely.

II. DISCUSSION

A. The Bradys made the endorsements in their personal capacities and not on behalf of the Brady Campaign.

The crux of the allegation in this case is that the Brady Campaign made an unlawful corporate in-kind contribution to the Nelson Committee when the Bradys attended a press conference at which they endorsed Senator Nelson. However, the Bradys made the endorsements while acting in their personal capacities, not on behalf of any corporate entity or political committee, and accordingly no unlawful corporate in-kind contribution was made.

On October 16, 2000, the Bradys participated in a press conference in which they personally endorsed Senator Nelson in the Florida general election for Senate. In its Factual and Legal Analysis, the Office of General Counsel erroneously concludes that the Bradys acted on behalf of the Brady Campaign when they made these endorsements. See Office of General Counsel, MUR 5158 Factual and Legal Analysis, at 4. This conclusion forms the sole basis of the Office of General Counsel's allegation that the Nelson Committee accepted an illegal corporate contribution.

The Office of General Counsel's conclusion relies on incorrect information inadvertently published by the Nelson Committee claiming that the Bradys endorsed Senator Nelson on behalf of the Brady Campaign.¹ Despite the erroneous representation made in the press statement, the Bradys attended the press conference and endorsed Senator Nelson in their individual capacities and not on behalf of the

¹ The Factual and Legal Analysis also purports to rely on a Ft. Lauderdale Sun-Sentinel article, published the day after the press conference, asserting that the Bradys endorsed Senator Nelson on behalf of the Brady Campaign. However, this article does not assert any such thing; rather, it refers to the "Bradys' endorsement," not an endorsement by the Brady Campaign or by the Bradys on behalf of the Brady Campaign. The caption under the picture that apparently accompanied the article makes the erroneous assertion that the endorsements were made on behalf of the Brady Campaign. Compl. Ex. 20.

Brady Campaign. In fact, a review of the texts of the Bradys' remarks at the event indicates that they were speaking on their own behalves and not on behalf of any entity when endorsing Mr. Nelson. Mrs. Brady's statement asserts that "Jim and I are here to wholeheartedly endorse Bill Nelson," referring specifically to her appearance with her husband and making no mention of the Brady Campaign or the Brady Committee. See Statement of Sarah Brady, October 16, 2000, at Exhibit A. Likewise, Mr. Brady's statement begins "I am very honored to endorse Bill Nelson," and likewise does not refer to the Brady Campaign or the Brady Committee. See Statement of Jim Brady, October 16, 2000, at Exhibit B.

This distinction that the Bradys drew between personal action and official action is one that the Act specifically permits. The Commission has repeatedly confirmed the ability of an individual to act in an official or representative capacity at one time and in an individual capacity at another time. See, e.g., Advisory Op. 1980-6 (an officer or stockholder of a corporation may make a contribution from personal funds that is not attributed to the corporation); Advisory Op. 1993-12 (individual members of a Native American Tribe that is a federal contractor may form their own political committee unconnected to the Tribe); Advisory Op. 1984-34 (a candidate may make campaign contributions in his individual capacity); Advisory Op. 2003-10 (Senator's son may solicit nonfederal funds for a state party in his personal capacity as a state official). The Commission again confirmed this during a recent rulemaking, asserting that an individual may wear "multiple hats" and function as an agent of an entity in certain circumstances but not in others. Explanation and Justification of Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,083 (July 29, 2002). The Supreme Court recently confirmed its support of this view. McConnell v. Fed. Election Comm'n, 2003 U.S. LEXIS 9195, at *119 (S.Ct. Dec. 10, 2003).

B. Even if the Bradys had acted on behalf of the Brady Campaign, no contribution in-kind resulted.

As noted above, the Bradys made their endorsements in their personal capacities and not on behalf of the Brady Campaign. However, even if the Bradys had acted on behalf of the Brady Campaign when making the endorsements, no corporate in-kind contribution resulted, as the expenses were properly paid by the Brady Committee. The Act and Commission regulations permit a corporation's separate segregated fund to make contributions in-kind to a candidate or political committee without attributing these acts to the corporation. See 11 C.F.R. § 114.2(f)(3) (2003). As the Office of

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General Counsel concedes in its Factual and Legal Analysis, the Brady Committee, the Brady Campaign's federally-registered separate segregated fund, paid for all expenditures made in connection with the event, and the Nelson Committee properly reported the payments. See Nelson Committee Pre-Election Report Schedule A for Line 11(c), at Exhibit C.

This leaves the time Mrs. Brady spent while at the event as the sole remaining expense potentially attributable to the press conference.² An individual may volunteer his or her own personal services to a candidate or campaign committee without making an in-kind contribution. See 11 C.F.R. § 100.74. Moreover, under the Commission's rules, a corporate employee may make "occasional, isolated, or incidental" use of corporate facilities to volunteer on behalf of a campaign without making an unlawful corporate contribution as long as the overhead or operating costs of the corporation are not increased. See 11 C.F.R. § 114.9.

Simply stated, no violation of the Act occurred here. Jim and Sarah Brady made personal endorsements at the press conference, and accordingly no corporate contribution resulted. Even if Mrs. Brady had made her endorsement on behalf of the Brady Campaign, she volunteered her time without increasing the Brady Campaign's overhead or operating costs, and the related travel expenses were properly paid and reported. The Commission should therefore decline to waste its resources pursuing this matter and should dismiss this action and close the file.

Please do not hesitate to call us should you have further questions.

Very truly yours,



Marc E. Elias

Rebecca H. Gordon

Counsel to the Respondents

² As Mr. Brady does not hold an official position at the Brady Committee or at the Brady Campaign, neither the complainant nor the Commission has alleged that his endorsement was attributable to or made on behalf of either entity.

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EXHIBIT A

**Statement Of Sarah Brady
Endorsement of Bill Nelson
October 16, 2000**

Thank you and good morning. It is an honor to be here with you today.

Jim and I are here to wholeheartedly endorse Bill Nelson as Florida's next United States Senator. He will be a leader on the issue of gun safety. Bill Nelson will take a common sense approach. The people of Florida will have a Senator who votes for them, not the gun lobby.

I also want to talk briefly about Bill McCollum's long career in Congress. Despite the fact that the majority of Floridians overwhelmingly voted for twice for gun safety measures, Bill McCollum works to undermine gun safety legislation in Washington.

In 1990, 84% of Florida voters supported passage of a constitutional amendment that established a three-day waiting period for handgun purchases. However, despite that support, Congressman McCollum returned to Washington, DC and twice voted against the Brady law, which provided for a handgun waiting period.

In November of 1998, the voters of Florida once again took the lead on a major public safety issue: closing the gun show loophole. They passed a constitutional amendment that allowed counties to establish background checks and waiting periods of up to 5 days for firearm sales. This measure passed by an impressive margin of 72% - 28%. But when the issue of the gun show loophole was debated in Congress in June 1999, Representative McCollum again ignored Florida voters' and opposed the legislation sponsored by Congresswoman Carolyn McCarthy to effectively close the gun show loophole.

Bill McCollum recently called waiting periods "extreme" even though waiting periods had the support of 84% of Floridians in 1990 and of 72% in 1998. It looks like the extreme view is the one taken by Bill McCollum.

Altogether, Rep. McCollum voted against the Brady Law three times, against the Federal Assault Weapons ban four times and a against closing the gun show loophole. And let me make something clear. He not only voted against us, he led the opposition. Bill McCollum has done more to undermine common sense gun control than almost any other member of Congress.

Floridians should take a hard look at Bill McCollum's record on the issue of guns. Ask yourselves a simple question: why should you vote for Congressman McCollum when he votes against you on the issue of gun safety at every single opportunity?

The simple answer is: since Bill McCollum listens to the gun lobby instead of Florida voters, you shouldn't send him to the U.S. Senate.

If you care about gun safety, and you want to keep your communities and neighborhoods safe - the choice is clear: vote for Bill Nelson for US Senate on November 7th.

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EXHIBIT B

**Statement of Jim Brady
Endorsement of Bill Nelson
October 16, 2000**

I am very honored to endorse Bill Nelson for the United States Senate. He will take his common sense values to Washington. And, as a Republican, I know he will work across party lines to make our country safer.

Make no mistake about it, Bill McCollum is extreme, not mainstream on the issue of guns.

You should know that Bill McCollum has led the opposition in Congress to sensible gun safety laws like the Brady Bill, the federal assault weapons ban and closing the gun show loophole. The gun lobby can always count on Bill McCollum to vote its way.

Through his leadership role on the House Judiciary Committee, Bill McCollum has done more than any member of Congress to undermine common-sense gun laws.

That is not what the people of Florida have shown they want, and it is certainly not what you deserve in a Senator.

The People of Florida deserve a senator who will listen to them, not the gun lobby. Bill Nelson will be a leader in the senate and will work for a safer Florida and a safer America.

Here's a Bear Brady Thumbs up for Florida's next senator, Bill Nelson.

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EXHIBIT C

SCHEDULE A

ITEMIZED RECEIPTS

 The separate schedule,
for each category of the
Detailed Summary Page

 PAGE 1 OF 4
FOR LINE NUMBER 11 (a)

Any information omitted from each receipt and statement may not be used as shown by any person for the purpose of soliciting contributions or for any other purpose, other than using the name and address of any political committee to solicit contributions from such committee.

 NAME OF COMMITTEE (In Full)
Bill Nelson for U.S. Senate Campaign Committee

A. Full Name, Mailing Address and Zip Code Action Comm. Rural Electrification PAC Mr. William S. Willingham P.O. Box 592 Tallahassee, FL 32302-	Name of Employer Occupation	Date (month, day, year) 10/17/2000	Amount of Each Receipt this Period 4,000.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 10,000.00		
B. Full Name, Mailing Address and Zip Code American Federation Govt. Employees PAC Mr. Matthew C. Marsen 3702 NW 22nd Place Gainesville, FL 32605-	Name of Employer Occupation	Date (month, day, year) 10/08/2000	Amount of Each Receipt this Period 3,500.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 5,500.00		
C. Full Name, Mailing Address and Zip Code Americans for Free Internat. Trade PAC 112 S. West St., Suite 310 Alexandria, VA 22314-	Name of Employer Occupation	Date (month, day, year) 10/12/2000	Amount of Each Receipt this Period 5,000.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 10,000.00		
D. Full Name, Mailing Address and Zip Code CVS Corporation PAC Mr. Carlos A. Ortiz 536 Market Hill Road Amherst, MA 01002	Name of Employer Occupation	Date (month, day, year) 10/13/2000	Amount of Each Receipt this Period 1,000.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 1,000.00		
E. Full Name, Mailing Address and Zip Code Capital City Democratic Women's Club PAC Ms. Anita L. Davis 708 Bragg Dr. Tallahassee, FL 32310	Name of Employer Occupation	Date (month, day, year) 10/14/2000	Amount of Each Receipt this Period 100.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 100.00		
F. Full Name, Mailing Address and Zip Code Committee for a Democratic Majority PAC Senator Edward Kennedy 426 C Street, NE Washington, DC 20002-	Name of Employer Occupation	Date (month, day, year) 10/13/2000	Amount of Each Receipt this Period 1,000.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 1,000.00		
G. Full Name, Mailing Address and Zip Code HCA Good Government Fund PAC One Park Plaza P.O. Box 550 Nashville, TN 37202-0550	Name of Employer Occupation	Date (month, day, year) 10/17/2000	Amount of Each Receipt this Period 1,000.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 1,000.00		

SUBTOTAL of Receipts This Page (optional)

\$25,100.00

TOTAL This Period (last page this line number only)

SCHEDULE A

ITEMIZED RECEIPTS

 Use appropriate schedule(s)
 List each separately on the
 Detailed Summary page

 PAGE 2 OF 4
 YOU LIKE NUMBER
 11(c)

Any information reported from such reports and statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes. Such uses violate the rules and address of any political committee to solicit contributions from such individuals.

NAME OF COMMITTEE (In Full)

Bill Nelson for U.S. Senate Campaign Committee

A. Full Name, Mailing Address and Zip Code HCA Good Government Fund PAC One Park Plaza P.O. Box 553 Nashville, TN 37202-0550 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -> 4,000.00	Date (month, day, year) 10/18/2000 Amount of Each Receipt this Period 3,000.00
B. Full Name, Mailing Address and Zip Code KALLPAC-Federal PAC Ms. Barbara Koivryohann P.O. Box 288 Kansas City, MO 64112- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -> 2,000.00	Date (month, day, year) 10/18/2000 Amount of Each Receipt this Period 2,000.00
C. Full Name, Mailing Address and Zip Code Hardgun Control, Inc PAC Ms. Marie Carbone 1225 Eye St., NW, Suite 1100 Washington, DC 20005- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Travel Aggregate Year-to-Date -> 9,578.13	Date (month, day, year) 10/16/2000 Amount of Each Receipt this Period 2,078.13 IN-KIND
D. Full Name, Mailing Address and Zip Code Hotel Employees & Restaurant Emp. PAC Mr. John W. Wilhelm 1219 - 26th St., NW Washington, DC 20007- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -> 2,000.00	Date (month, day, year) 10/04/2000 Amount of Each Receipt this Period 2,000.00
E. Full Name, Mailing Address and Zip Code Int. Bro. - Painters & Allied Trades PAC Mr. Michael E. Mours 1750 New York Ave., NE Washington, DC 20006- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -> 10,000.00	Date (month, day, year) 10/11/2000 Amount of Each Receipt this Period 5,000.00
F. Full Name, Mailing Address and Zip Code Int. Council of Cruise Lines PAC 1211 Connecticut Ave., NW, Suite 800 Washington, DC 20036- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Florida 2000 Aggregate Year-to-Date -> 3,000.00	Date (month, day, year) 10/10/2000 Amount of Each Receipt this Period 3,000.00 MEMO
G. Full Name, Mailing Address and Zip Code Int. Union of Operating Engineers PAC Mr. Gary Waters 1425 NW 36th St. Miami, FL 33142- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -> 2,000.00	Date (month, day, year) 10/12/2000 Amount of Each Receipt this Period 1,000.00

SUBTOTAL of receipts This Page (optional)

\$15,078.13

TOTAL This Period (last page this line number only)

SCHEDULE A

ITEMIZED RECEIPTS

See separate schedule(s) for each category of the Detailed Summary Page

PAGE 3 OF 4
FORM TNE NUMBER 11(c)

Any information supplied here, such as receipts and statements, may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes. Other laws using the name and address at any position, nomination for elective office, or for such purposes.

NAME OF COMMITTEE (In Full)

Bill Nelson for U.S. Senate Campaign Committee

A. Full Name, Mailing Address and Zip Code Nat. Assn of Chain Drug Stores PAC Mr. S. Lawrence Kuyper P.O. Box 1417-D49 Alexandria, VA 22313-148C Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -- 1,000.00	Date (month, day, year) 10/09/2000	Amount of Each Receipt this Period 1,000.00
B. Full Name, Mailing Address and Zip Code Nat. Assn of Social Workers PAC 750 First St., NE, Suite 700 Washington, DC 20002 4341 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -- 7,000.00	Date (month, day, year) 10/11/2000	Amount of Each Receipt this Period 5,000.00
C. Full Name, Mailing Address and Zip Code New Democratic Network PAC 501 Capitol Court, Suite 200 Mr. Simon Rosenberg Washington, DC 20002- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Credit Card Fee Aggregate Year-to-Date -- 3,574.24	Date (month, day, year) 10/03/2000	Amount of Each Receipt this Period 2.79 IN-KIND
D. Full Name, Mailing Address and Zip Code Pakistani Physicians PAK-PAC 7150 Van Dusen Rd., Suite 420-A Laurel, MD 20707 5265 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -- 1,500.00	Date (month, day, year) 10/18/2000	Amount of Each Receipt this Period 1,500.00
E. Full Name, Mailing Address and Zip Code Participation 2000 PAC Ms. Susan Ann Markham 336 Massachusetts Ave., NE, Suite 104 Washington, DC 20002- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Bridget Walsh-Stipend Aggregate Year-to-Date -- 2,644.00	Date (month, day, year) 10/15/2000	Amount of Each Receipt this Period 750.00 IN-KIND
F. Full Name, Mailing Address and Zip Code Solatia Citizenship Fund PAC 575 Macyville Centre Dr. P.O. Box 66760 Saint Louis, MO 63166-G760 Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -- 1,000.00	Date (month, day, year) 10/17/2000	Amount of Each Receipt this Period 1,000.00
G. Full Name, Mailing Address and Zip Code United Campaign Committee PAC Ms. Arcine Raskerry 1405 NW 15th St., #101 Miami, FL 33169- Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Name of Employer Occupation Aggregate Year-to-Date -- 1,000.00	Date (month, day, year) 10/16/2000	Amount of Each Receipt this Period 1,000.00

SUBTOTAL of Receipts This Page (optional)

\$10,252.79

TOTAL This Period (last page this line number only)

SCHEDULE A

ITEMIZED RECEIPTS

Use separate schedule for each category of the detailed Receipt Page

PAGE 4 OF 4
FOR LINE NUMBER 11(c)

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NAME OF COMMITTEE (in full)

Bill Nelson for U.S. Senate Campaign Committee

A. Full Name, Mailing Address and Zip Code United Food and Commercial Workers PAC Mr. Ed Chambers 7600 Southland Blvd., Suite 102 Orlando, FL 32839-8511	Name of Employer	Date (month, day, year)	Amount of Each Receipt this Period
	Occupation	10/18/2000	5,000.00
Receipt For: <input type="checkbox"/> Primary <input checked="" type="checkbox"/> General <input type="checkbox"/> Other (specify)	Aggregate Year-to-Date -> 7,500.00		

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SUBTOTAL of Receipts This Page (optional)

\$5,000.00

TOTAL This Period (last page this line number only)

\$45,430.92